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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/717,228	11/22/2000	Hiroyuki Kanemitsu	04739.0069	1506

22852 7590 03/27/2003

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EXAMINER
KOSTAK, VICTOR R

ART UNIT	PAPER NUMBER
2611	5

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/717,228	Kanemitsu
Examiner	**Art Unit**
Victor R. Kostak	2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-13 is/are pending in the applica

4a) Of the above, claim(s) _____ is/are withdrawn from considera

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-13 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirem

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some* c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 and 4
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. Note MPEP 606.01.

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinavasan.

The pay-per broadcasting system of Srinavasan involves network accessing of various multimedia data, examples including movies and TV program data (col. 4 lines 31-35), which is carried out by browser software incorporated in browser 30 (Fig. 18). Each program piece to be selected would inherently include unique identification in order for the server to know which program is being selected, as well as the receiver for future access of the stored program (Srinavasan mentions session ID, for example: col. 5 lines 50-51). The programming desired to

be received is sent to the user for recording on unit 20, and upon detection of a failed recording (due to various causes), both the server and user are notified (e.g. col. 6 lines 51-65).

It would have been clearly obvious to retransmit an alternate program which was originally intended to be recorded but instead failed, since the user's goal was to obtain a recording of that program in the first place, thereby meeting claims 1 and 11.

As for claim 2, the system of Srinavasan would therefore enable subsequent attempts to rerecord the alternate programming (which is actually the same program) as so reserved by the user.

As for claims 3 and 6, it would have further obvious to keep the user informed on the status of any failed and subsequent attempt at recording for the clear purpose of keeping the user informed in a user-friendly way, particularly since the user is being billed on a program-by-program basis.

4. Claims 4, 5, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gruse et al.

The video recording system and method of Gruse allows for recording of a program subsequent to a user viewing that same program (e.g. Figs. 4, 5). Wherein the program has an ID which the viewer uses to prepare recorder 16 (Fig. 2), the overall control being carried out by processor 18.

Since it is inevitable that not each and every recording would be considered fully adequate for replay by a viewer, regardless of how minor any defect may be (such as poor audio accompaniment: visual defects including snow or mistracking, color misrepresentation; timing misalignment, etc.), it would have been obvious to label such a recording as a failure, which recording may follow a previous recording of another program.

It would also have been obvious to follow that poor recording with another recording for the clear purpose of using the entirety of a tape (regardless of any awareness of the poor quality of the unacceptable recording), upon a subsequent availability of a desired program, all of the programming enabled by addressing respective unique IDs . The first program, which can be considered adequate for subsequent replay is therefore immediately linked to the last program by the program considered poor in quality, thereby meeting claims 4 and 12.

As for claim 5, since Gruse points out that repeat programming can be made available (col. 2 lines 19-21) which enables the viewer to prepare or view the program at different time for convenience, it would have accordingly have been obvious to re-record the poorly recorded program with another version in its place, thereby minimizing alteration of the tape sequence and overlapping the poor quality recording with the same program of a better quality.

As for claim 7, the information related to the failed program s the program itself which is presented by the recorder upon playback.

5. Claims 8-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schindler et al.

The home entertainment system of Schindler (noting particularly Figs. 1, 3 and 8) enables reception of broadcast programming through multiple sources (e.g. col. 1 lines 52-62) under the control by computer 118, which carries out instructions to prevent duplicate recording by virtue of an associated database which tracks what has already been viewed or recorded (e.g. col. 4 lines 17-19).

Although Schindler does not specify what exact ID accompanies the respective program, the skilled artisan realizes that programs must be uniquely identified in order for the database to recognize them and accordingly prevent duplication. Therefore, it would have been clearly obvious to use any suitable accompanying ID unique to each program, such as header ID data which is inherent to MPEG data streams (Schindler allows the use of MPEG: e.g. col. 3 line 57), computer 118 thereby making search comparisons in the database to seek out already recorded programming, thereby meeting claims 8 and 13.

As for claim 9, it would also have been obvious to inform the user by PC 118 why a desired program will not be recorded subsequent to a recording request, for the clear benefit of not keeping the user in the dark about it.

As for claim 10, PC 118 prevents duplicate recording upon recognizing that that program is already recorded, as mentioned above.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is (703)-305-4374. The examiner can normally be reached on Monday through Friday from 6:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew I. Faile, can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone (703) 306-0377.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314 (For either formal or informal communications intended for entry. For informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Victor R. Kostak

Primary Examiner

VRK

3/24/03